



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 23, 1974

The Honorable R. W. Steen
President

Stephen F. Austin State University
Nacogdoches, Texas 75961

Open Records Decision No. 34

Re: Availability of faculty evaluation
made by students

Dear Dr. Steen:

The administration of Stephen F. Austin State University has decided to solicit student evaluations of courses and faculty members using anonymous printed forms. The evaluations of each faculty member were combined into one form which shows that a certain percent of the students rated the faculty members one way and a certain percent gave a different rating. These compilations are now contained in the personnel file on each faculty member along with much other information.

On December 6, 1973, a representative of the student government at Stephen F. Austin State University requested, under the provisions of Article 6252-17a, V. T. C. S., the Open Records Act, that you disclose the results of the student evaluations of individual faculty members, so that the information might be compiled and disseminated to the student body. By reply letter of December 7, 1973, you expressed awareness of the law but refused to disclose, claiming that the documents involved fell within the exception of §3(a)(2) of the Act. Section 3(a)(2) exempts from the mandatory disclosure provision [§ 3(a)] of the Open Records Act "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ." (Emphasis added)

Six weeks later, on January 21, 1974, the same student representative wrote to this office advising us of your negative response to his request and, in effect, notifying this office of your failure to comply with § 7(a) of the statute. Section 7(a) provides:

"If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information." (Emphasis added)

On January 25th you requested our decision in this matter.

As we stated in Open Records Decision No. 26 (1974), when an agency has failed to request our advice within ten days of the initial request, § 7(a) of the Act calls upon us to presume that the information in question is public. "Ordinarily, this presumption will not be overcome unless there is a compelling demonstration that the information requested should not be released to the public, as might be the case, for instance, if it is information deemed confidential by some other source of law." (Emphasis added) Open Records Decision No. 26 (1974).

We believe that a showing that disclosure of that information would "constitute a clearly unwarranted invasion of personal privacy" within § 3(a) (2) would probably be such a compelling demonstration as to overcome the presumption of § 7(a). However, in our opinion, the disclosure of the results of anonymous student evaluations based on questions of the following sort would not in this case constitute a clearly unwarranted invasion of personal privacy:

Q: grading in the course has been fair and impartial.

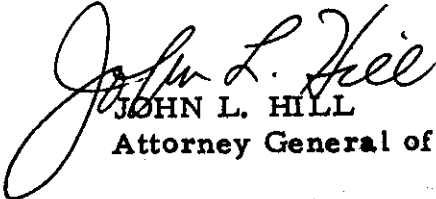
A: (a) strongly agree, (b) agree, (c) undecided, (d) disagree, (e) strongly disagree (mark one).

See Attorney General Opinions H-90(1973), H-258 (1974) and Open Records Decisions No. 1 (1973) and No. 18A(1974), pertaining to the right of privacy.

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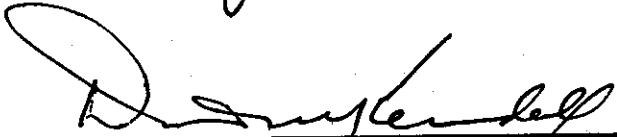
In brief, as the information is presumptively public under § 7(a) of the Act, as that presumption has not been overcome, and as none of the pertinent sections are otherwise shown to apply, therefore the compilation should be disclosed per § 3(a) of the law.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


C. J. CARL, Staff Legislative Assistant


DAVID M. KENDALL, Chairman
Opinion Committee